

112TH CONGRESS
1ST SESSION

S. 1228

To prohibit trafficking in counterfeit military goods or services.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2011

Mr. WHITEHOUSE (for himself, Mr. GRAHAM, Mr. COONS, and Mr. MCCAIN)
introduced the following bill; which was read twice and referred to the
Committee on the Judiciary

A BILL

To prohibit trafficking in counterfeit military goods or
services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Combating Military
5 Counterfeits Act of 2011”.

6 **SEC. 2. TRAFFICKING IN COUNTERFEIT MILITARY GOODS**
7 **OR SERVICES.**

8 (a) **TRAFFICKING IN COUNTERFEIT MILITARY**
9 **GOODS OR SERVICES.**—Section 2320 of title 18, United
10 States Code, is amended—

(1) in subsection (a), by adding at the end the following:

“(3) MILITARY GOODS OR SERVICES.—

“(A) IN GENERAL.—A person who commits an offense under paragraph (1) shall be punished in accordance with subparagraph (B) if—

“(i) the offense involved a good or service described in paragraph (1) that if it malfunctioned, failed, or was compromised, could reasonably be expected to cause—

“(I) serious bodily injury or death;

“(II) disclosure of classified information;

“(III) impairment of combat operations; or

“(IV) other significant harm to a member of the Armed Forces or to national security; and

“(ii) the person had knowledge that the good or service is falsely identified as meeting military standards or is intended

1 for use in a military or national security
2 application.

3 “(B) PENALTIES.—

4 “(i) INDIVIDUAL.—An individual who
5 commits an offense described in subpara-
6 graph (A) shall be fined not more than
7 \$5,000,000, imprisoned for not more than
8 20 years, or both.

9 “(ii) PERSON OTHER THAN AN INDI-
10 VIDUAL.—A person other than an indi-
11 vidual that commits an offense described in
12 subparagraph (A) shall be fined not more
13 than \$15,000,000.

14 “(C) SUBSEQUENT OFFENSES.—

15 “(i) INDIVIDUAL.—An individual who
16 commits an offense described in subpara-
17 graph (A) after the individual is convicted
18 of an offense under subparagraph (A) shall
19 be fined not more than \$15,000,000, im-
20 prisoned not more than 30 years, or both.

21 “(ii) PERSON OTHER THAN AN INDI-
22 VIDUAL.—A person other than an indi-
23 vidual that commits an offense described in
24 subparagraph (A) after the person is con-
25 victed of an offense under subparagraph

1 (A) shall be fined not more than
 2 \$30,000,000.”; and

3 (2) in subsection (e)—

4 (A) in paragraph (1), by striking the pe-
 5 riod at the end and inserting a semicolon;

6 (B) in paragraph (3), by striking “and” at
 7 the end;

8 (C) in paragraph (4), by striking the pe-
 9 riod at the end and a semicolon; and

10 (D) by adding at the end the following:

11 “(5) the term ‘falsely identified as meeting mili-
 12 tary standards’ relating to a good or service—

13 “(A) means the good or service—

14 “(i)(I) bears a label, tag, stamp, prod-
 15 uct code, phrase, or emblem of any kind
 16 that indicates that the good or service
 17 meets a standard, requirement, or speci-
 18 fication issued by the Department of De-
 19 fense, an Armed Force, or a reserve com-
 20 ponent;

21 “(II) is packaged in a wrapper, con-
 22 tainer, box, case, or packaging of any type
 23 or nature which bears a label, tag, stamp,
 24 product code, phrase, or emblem of any
 25 kind which indicates that the good or serv-

1 ices meets a standard, requirement, or
2 specification issued by the Department of
3 Defense, an Armed Force, or a reserve
4 component; or

5 “(III) is accompanied by or marketed
6 with a certificate or other oral or written
7 representation that the good or service
8 meets a standard, requirement, or speci-
9 fication issued by the Department of De-
10 fense, an Armed Force, or a reserve com-
11 ponent; and

12 “(ii) does not meet the standard, re-
13 quirement, or specification of the Depart-
14 ment of Defense, an Armed Force, or a re-
15 serve component that is indicated or rep-
16 resented in a manner described in clause
17 (i); and

18 “(B) shall not apply to—

19 “(i) the identification of a good or
20 service in a manner that is unlikely to
21 cause confusion, to cause mistake, or to
22 deceive; or

23 “(ii) a good or service if the standard,
24 requirement, or specification issued by the
25 Department of Defense, an Armed Force,

1 or a reserve component has only a de mini-
 2 mis relationship to national security or the
 3 safety of the members of the Armed
 4 Forces; and

5 “(6) the term ‘use in a military or national se-
 6 curity application’ means the use of a good or serv-
 7 ice, independently, in conjunction with, or as a com-
 8 ponent of another good or service—

9 “(A) during the performance of the official
 10 duties of the Armed Forces of the United
 11 States or the reserve components of the Armed
 12 Forces; or

13 “(B) by the United States to perform or
 14 directly support—

15 “(i) combat operations; or

16 “(ii) critical national defense or na-
 17 tional security functions.”.

18 (b) SENTENCING GUIDELINES.—

19 (1) DIRECTIVE.—The United States Sentencing
 20 Commission shall review and, if appropriate, amend
 21 the Federal sentencing guidelines and policy state-
 22 ments applicable to persons convicted of an offense
 23 under section 2320(a) of title 18, United States
 24 Code, to reflect the intent of Congress that penalties
 25 for such offenses be increased in comparison to

1 those provided on the day before the date of enact-
2 ment of this Act under the guidelines and policy
3 statements.

4 (2) REQUIREMENTS.—In amending the Federal
5 Sentencing Guidelines and policy statements under
6 paragraph (1), the United States Sentencing Com-
7 mission shall—

8 (A) ensure that the guidelines and policy
9 statements, including section 2B5.3 of the Fed-
10 eral Sentencing Guidelines (and any successor
11 thereto), reflect—

12 (i) the serious nature of the offenses
13 described in section 2320(a) of title 18,
14 United States Code;

15 (ii) the need for an effective deterrent
16 and appropriate punishment to prevent of-
17 fenses under section 2320(a) of title 18,
18 United States Code; and

19 (iii) the effectiveness of incarceration
20 in furthering the objectives described in
21 clauses (i) and (ii);

22 (B) consider the extent to which the guide-
23 lines appropriately account for the risk, even if
24 attenuated or unknown to the offender, to
25 members of the Armed Forces of the United

1 States, military readiness, and national security
2 resulting from an offense committed under sec-
3 tion 2320(a) of title 18, United States Code, in-
4 cluding in instances involving a limited value or
5 quantity of goods or services;

6 (C) ensure reasonable consistency with
7 other relevant directives and guidelines and
8 Federal statutes;

9 (D) make any necessary conforming
10 changes to the guidelines; and

11 (E) ensure that the guidelines relating to
12 offenses under section 2320(a) of title 18,
13 United States Code, adequately meet the pur-
14 poses of sentencing, as described in section
15 3553(a)(2) of title 18, United States Code.

16 (3) EMERGENCY AUTHORITY.—The United
17 States Sentencing Commission shall—

18 (A) promulgate the guidelines, policy state-
19 ments, or amendments provided for in this Act
20 as soon as practicable, and in any event not
21 later than 180 days after the date of enactment
22 of this Act, in accordance with the procedure
23 set forth in section 21(a) of the Sentencing Act
24 of 1987 (28 U.S.C. 994 note), as though the
25 authority under that Act had not expired; and

1 (B) pursuant to the emergency authority
2 provided under subparagraph (A), make such
3 conforming amendments to the Federal sen-
4 tencing guidelines as the Commission deter-
5 mines necessary to achieve consistency with
6 other guideline provisions and applicable law.

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